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The Constitution of the United, Its Sources and Its Applications, by Thomas James Norton

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REVIEWS

THE CONSTITUTION, ITS SOURCES AND APPLICATION*

The collapse of monarchical government in Europe coming with the World War and after has stimulated a study of our Constitution. While our Constitution is brief and simple, the purpose of its provisions and its applications to the needs of mankind cannot be fully comprehended except through a study of the intent of its makers and the history of the growth of their ideas.

Among all the great commentaries on that document none has given the understandable vision of it that is painted like a picture in the book of Thomas James Norton, "The Constitution of the United States, Its Sources and Application." While the book has been on sale for some time and ordinarily would not be chosen as a subject for review, yet it so fully supplies a present need that it cannot too often be brought to the attention of Americans, both the lawyer and the layman. The disturbed condition of society and government throughout the old world has brought us to a realization that we have something in our government that is the best man has devised, and we are more than ever making an effort to point it out to all Americans. No better guide in that work can be found than Mr. Norton's book. In fact, it may almost be said to be the only book that is a safe guide to the understanding of the many phases of the great document without more effort than the average man is willing to give to a subject thought by most of us to be a dry one.

When we have gotten fairly started into the book we begin to realize that we are not studying an abstruse plan of civil government but that we are really reading one of the most delightful chapters in the history of civil liberty. Leaving for a little time the story as told by Mr. Norton, it might be worth while to recount just how the great work was started.

About 1785 Spain, then in control of West Florida, which covered what is now the southern part of Alabama and Mississippi and a small part of Louisiana, closed the Mississippi River to navigation south of the Yazoo, as to all traffic coming from

*The Constitution of the United, Its Sources and Its Application, by Thomas James Norton, Published by Little, Brown and Company, Boston, 1925. pp. xix, 316. Price \$2.00

above that point. This caused great excitement in the valleys of the Mississippi, the Ohio and the Wabash. Feeling ran high, threats were made to send militia down the river and capture Natches and New Orleans and a band of soldiers sacked the store of a Spaniard at Vincennes.

Away back in 1770 Washington had pointed out the need of transit lines for an outlet of the Mississippi Valley settlers to the seaboard and just before resigning his commission in the army he had explored the Mohawk Valley where the New York Central Railroad now lies and after his retirement he devoted his attention to the improvement of means of intercourse between the east and the settlers west of the Alleghenies who had become embittered because the east did not take up the fight of the west in its effort to find an outlet for its trade down the Mississippi. Washington started to work out a scheme of connecting the headwaters of the Potomac and Ohio Rivers and had a meeting at Mt. Vernon of commissioners from Virginia and Maryland. At this meeting it was suggested that the two States, while they were about it, should agree on a uniform currency and system of duties and a plan was submitted to the Legislatures of the two States. Toward the end of 1785, after the Virginia Legislature had worn itself out wrangling over this plan, Madison prepared a resolution that commissioners from all the States should hold a meeting and discuss the best method of securing uniformity between the States on commercial questions. This movement finally resulted in an invitation to all the States to send commissioners to a convention at Annapolis on the first Monday of September, 1786. When the date came only Delaware, New Jersey, New York, Pennsylvania and Virginia were present. This convention therefore was a failure, but before adjourning it issued a call, written by Hamilton, to all the States to meet on the second Monday of the following May at Philadelphia. This call was answered.

Congress at first refused to recognize the convention, but Virginia went ahead and appointed her delegates and among them was Washington. A flood of hopeful enthusiasm spread over the country and Congress finally passed a resolution calling a convention at the same time and place in all respects the same as the one called from Annapolis. This convention formed the Constitution to protect the man in his life, his liberty, his property, and it has been found to be "in truth a coat of mail" to that end.

The first part of the great document deals with the legislative department of the government. Mr. Norton calls attention to

the fact that up to the time of the adoption of the Constitution legislative bodies on the continent had power to fix the terms of their members, but our Constitution took away this power and fixed the term of a representative at two years and of a senator at six years.

The constitutional convention had before it the story of the Parliament of England: Charles I of England ruled for eleven years without calling a session of Parliament and then when a session came he dissolved it after three weeks. When the king was driven to call another Parliament it determined to perpetuate itself and continued in session until Cromwell and his soldiers dissolved it after it had been in session nearly twenty years. France had experienced trouble with her States General. At the time of Washington's inauguration as President the States General of France had not been called together for 175 years. To meet and avoid conditions like these the Constitution provides that "the Congress shall assemble at least once in every year."

The Houses of Parliament in England possess judicial as well as legislative power, but a half century ago and again in 1916 our Supreme Court held that the Congress possessed no judicial power when it attempted to exercise the power to punish for contempt, but it may punish its own members and pass upon their qualifications.

There are many blots on English history because of the strife between the House of Lords and the House of Commons. This strife has been avoided in the United States by the requirement that the House and Senate sit at the same time and place and work together, neither having power to adjourn for more than three days without the other.

The provision of the Constitution that "No person holding any office under the United States shall be a member of either House during his continuance in office" seems a simple thing of little consequence at first glance. The discussion of this provision well illustrates one of the principal merits of Mr. Norton's book. The provision was earnestly debated in the convention. During the time of the Tudors a considerable portion of the members of the House of Commons held official appointments from the king and especially in the reign of Henry VIII was this true, and that Parliament released the king from all loans made him by his subjects. A flood of light from history is thrown on this simple, unobtrusive provision by the research of Mr. Norton.

It was the frequent troubles between the Crown and Parliament and the control over the House of Commons by the Crown through appointments to office that led the Constitutional Convention to guard against such control through appointment to office, and to provide for the control of appropriations by requiring them to originate with representatives elected directly by the people.

A legislative body such as the House of Representatives elected by direct vote of the people may initiate hasty and ill considered legislation and the Senate, though less precipitate in its action, may join in it and, as Madison said, the veto power was, by the Constitution, given to the President as "a check to the instability in legislation which had been found the besetting infirmity of popular governments, and been sufficiently exemplified among ourselves in the Legislatures of the States." At the same time the colonists had felt the evil influence of an absolute veto in the refusal of George III to give his assent to laws "the most wholesome and necessary for the public good" and so it was provided that the Congress might by a two-thirds vote of those present in each house override the veto.

The Confederation was a failure largely because it had no power to levy taxes. Therefore the first power enumerated as given to the National Government by the Constitution was the right to levy taxes.

In colonial days immigration was desired. Complaint was made that George III did much to discourage it and to prevent the peopling of the American States. Because of the varying naturalization laws of the colonies much confusion resulted. For this reason the States surrendered to the Union the right to establish a uniform rule of naturalization. Much international conflict continued, however, with reference to the rights of naturalized citizens, and this conflict finally resulted in the War of 1812 with England. It was not until 1870, within the memory of many now living, that Great Britain concluded to acknowledge that our naturalized subjects, emigrating from England should be treated as American natives. Thus a rule beginning probably in the days of the Roman Empire and affirmed by treaty between the two great English-speaking nations became settled international law for practically all the world.

Imprisonment for debt existed from the earliest times and the ordinance erecting the Northwest Territory authorized imprisonment for debt. The more humane had begun to revolt at such oppression of the unfortunate and, taking for example the

Hebrew law that commanded the release of every debtor every seven years, the Constitutional Convention authorized the Congress to establish Bankrupt laws.

Weights and measures, counterfeiting, post offices, post roads, patents, copy rights and trade marks, inferior courts, piracies, and other subjects are covered in the grant of legislative powers, and then we come to the general grant of all powers necessary to carry into execution those specifically granted, an unnecessary grant perhaps, but quite proper in order to silence captious objections. This made the Constitution on its face adaptable to all times and to all circumstances. The first application of this clause came when President Jefferson, the strict constructionist, who, as John Quincy Adams said, "came in blowing a trumpet against implied powers," put through the purchase of Louisiana to "provide for the common defense and general welfare" by opening to the traffic from the interior the mouth of the Mississippi. It was under this clause that the national banking system was established which culminated in the Federal Reserve System, probably the greatest banking system the world has ever known and under which currency and banking have been stabilized and the purchasing power of wages has increased about twice as much as in the quarter of a century immediately preceding the system's establishment.

Only that part of Mr. Norton's book which treats of Article I of the Constitution—that part treating of legislative powers—has been discussed in this review, but enough has been said to point out the plan of the book. It is not possible within the scope of a review of any reasonable length to give an adequate estimate of the excellence of the book. It ought to be in every American's library.

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